

03500.015697

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
	:	Examiner: Justin P. Misleh
MAHITO SHINOHARA)	
	:	Group Art Unit: 2622
Application No.: 09/935,589)	
	:	Confirmation No. 3628
Filed: August 24, 2001)	
	:	
For: SOLID-STATE IMAGE)	
PICKUP APPARATUS	:	
	:	
U.S. Patent No. 7,116,367 B2)	
	:	
)	
Issued: October 3, 2006	:	December 4, 2006

Mail Stop PTA
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT
TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)

Sir:

Patentee hereby requests under 37 C.F.R. § 1.705(d) reconsideration and recalculation of the Patent Term Adjustment for the above-identified patent. The \$200.00 fee set forth in 37 C.F.R. § 1.18(e) may be charged to Deposit Account No. 50-3939. Any deficiency in this fee may be charged to Deposit Account 06-1205. Any overpayment should be credited to the Deposit Account charged.

For the following reasons, this patent is believed to be entitled to a patent term adjustment (PTA) of 577 days.

1. The present patent issued from Application No. 09/935,589, filed on August 24, 2001.
2. The present patent is not subject to any terminal disclaimers.
3. Pursuant to 37 C.F.R. § 1.705(b) and (d), reconsideration of the determination regarding the PTA made for the period prior to the November 17, 2005 mailing date of the Notice of Allowance is not requested.
4. The Patent Application Information Retrieval (PAIR) system indicates Patentee's delay period of 173 days, for a period from February 18, 2006 to August 9, 2006, under 37 C.F.R. § 1.704(c)(3). Patentee does not dispute this determination.
5. The PAIR system indicates a U.S. Patent and Trademark Office (PTO) delay period of 18 days, for a period from September 16, 2006 to October 3, 2006, under 37 C.F.R. § 1.703(a)(6). Patentee does not dispute this determination.
6. The PAIR system indicates Patentees' delay period of 87 days, for a period from February 18, 2006 to May 15, 2006. Patentee disputes this determination.

ARGUMENTS

1. It is respectfully submitted that the PTO erroneously reduced the PTA for a period from February 18, 2006 to May 15, 2006 by counting the time period twice. This is clearly supported by the PTO's Image File Wrapper of the present patent, as well as by Patentee's attorneys' records.

2. Under 37 C.F.R. § 1.704(c)(3), the PTO can reduce the amount of the PTA due to the late payment of the issue fee by the time period “beginning on the date of abandonment or the date after the date the issue fee was due and ending on the earlier of:

(i) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or (ii) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed.”

3. According to the PTO records, the Notice of Allowance in the present case was mailed on November 17, 2005. However, Patentee’s attorneys never received this paper. Consequently, the application became abandoned on February 18, 2006 when no issue fee was received. Upon learning of the abandonment from the Notice of Abandonment mailed on April 14, 2006, Patentee filed a Petition to Revive Unavoidably Abandoned Application Under 37 C.F.R. §1.137(a) on May 15, 2006. That Petition was granted on August 9, 2006.

4. In view of the above, under 37 C.F.R. § 1.704(c)(3), the PTA reduction associated with the late payment of the issue fee in this case should account for the period beginning on February 18, 2006 (the date of abandonment or the date after the date the issue fee was due) and ending on August 9, 2006 (the date of mailing of the decision reviving the application or accepting late payment of the issue fee). This time period, as has been noted next to the “Record Petition Decision of Granted to Accept Delayed Payment of Issue Fee” on the PAIR system, is 173 days.

5. The PTA reduction of 87 noted next to the “Issue Fee Payment Verified” entry on the PAIR system indicates that the PTO further reduced the PTA for a time period beginning on February 18, 2006 and ending on May 15, 2006. Since this time period

completely overlaps that from February 18, 2006 to August 9, 2006 and has already been included in the above-mentioned reduction under 37 C.F.R. § 1.704(c)(3), Patentee respectfully submits that it has been “double counted”, which is not permitted under 37 C.F.R. § 1.704(c).

RELIEF REQUESTED

Reconsideration of the patent term adjustment is respectfully requested, in which the reduction of 87 days associated with the time period beginning on February 18, 2006 and ending on May 15, 2006 be adjusted to 0 days. It is, therefore, requested that the patent term adjustment be recalculated and adjusted to 577 days.

Patentee’s undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

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